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REMARKS

Claims 13, 15-19, and 22 are pending in the present application after this amendment cancels claims 12, 14, 20, and 21 and adds new claim 22. Claims 13 and 15-19 have been amended to correct typographic errors, to respond to the rejections, and/or to further clarify the subject matter recited therein. No new matter is added. In view of the amendments and the following remarks, favorable reconsideration of this case is respectfully requested.

Applicants note with appreciation that the Examiner acknowledges the claim of priority. However, the Examiner has not acknowledged receipt of the priority document in the parent application, and Applicants respectfully request such acknowledgement in the next Office communication.

Claim 13 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The Examiner asserts that the claim contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In particular, the Examiner indicates that the claims is not enabled since it is not known how a block can be notified. Amended claim 13 relates to a software device that includes, *inter alia*, a communication unit that *notifies the radio terminal device* of a number of divided blocks for transmitting of the stored software and transmits the divided blocks to the radio terminal device. It is respectfully submitted that the amendment clarifies that the communication unit notifies the radio terminal device of the number of divided blocks, and that therefore the claim is enabled. Applicants consequently respectfully request that the rejection be withdrawn.

Claims 13, 15, and 16 (claim 12 having been canceled) are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The Examiner asserts

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that, although claim 13 recites "a memory", the Examiner considers this to be a software abstraction of a real and tangible memory as the claims are directed toward a "software device". However, the Examiner's conclusion regarding the memory recited therein being an abstraction is without support. Furthermore, this interpretation ignores the element of the communication unit also recited in the claims. However, in the interest of expediting prosecution, the preamble of claim 13 has been amended to clarify that the claim is directed to a software supplying device. Therefore it is respectfully submitted that the claim is directed to statutory subject matter and consequently the rejection should be withdrawn.

The Examiner does not provide an explanation of the rejection of claims 15 and 16, and therefore Applicants are not able to respond to this rejection properly. Applicants respectfully request clarification of the Examiner's position with respect to these claims, and respectfully request that if this rejection is repeated in a further office action, that such action be non-final in order to allow Applicants to properly respond to this rejection.

Claims 15 and 19 (claims 12 and 18 having been canceled) are rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 4, 5, 7, 8, and 10 of United Patent No. 6,687,901. The Examiner asserts that, although the conflicting claims are not identical, they are not patentably distinct. Applicants submit herewith a terminal disclaimer disclaiming any patent term of the instant case which extends past that of U.S. Patent No. 6,687,901. Therefore, it is respectfully requested that the rejection be withdrawn.

Claims 13 and 15-19 (claims 12, 14, 20, and 21 having been canceled) are rejected under 35 U.S.C. 102(e) as being anticipated by United States Patent 6,023,620 to Hansson (hereinafter referred to as Hansson). The Examiner asserts that Hansson discloses a communication unit communicating with a radio terminal device and a memory storing a first control-software

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relating to a radio communication function of a radio terminal device at figure 1 and column 1, lines 40-56, of Hansson. However, Hansson does not disclose the feature of "notifies said radio terminal device of a number of divided blocks for transmitting of said stored software notifies a number of divided blocks for transmitting of said stored software." Rather in Hansson, a checksum may be performed, and apparently the length of the file only is notified. Since Hansson does not identically disclose the feature of claim 13 of *notifying a number of divided blocks*, Hansson does not render claim 13 unpatentable.

Claim 15 recites a radio terminal that includes, *inter alia*, a controller that operates to inhibit communications with said software-supply device for updating said software based on a power condition of said radio terminal device. The Examiner asserts that if the cellular phone in Hansson is off, then it cannot communicate. Applicants respectfully submit that Hansson gives no suggestion relating to *the controller* inhibiting communication based on a power condition. In Hansson, if the controller is off, then the controller is not operable to inhibit anything. Therefore, Hansson does not disclose a *controller operates to inhibit communications* with said software-supply device for updating said software based on a power condition of said radio terminal device. Since Hansson does not identically disclose this feature of claim 15, the reference does not render claim 15 unpatentable.

Claim 16 relates to a radio terminal that includes, *inter alia*, a controller *inhibiting communications with said software-supply device when said radio terminal is communicating with another device*. The Examiner asserts that Hansson discloses this feature at column 2, lines 50-51 and figure 2 (Office Action; page 7, lines 17-19). However, the cited section of Hansson does not disclose anything about inhibiting communication with a software-supply device, but rather apparently indicates that a user may choose to delay downloading. Likewise, figure 2

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provides no disclosure or suggestion of a controller inhibiting communication based on the radio terminal communicating with another device. Therefore, for at least this reason, claim 16 is allowable.

Claim 17 relates to a radio terminal that includes, *inter alia*, a controller stopping a download of software from said software-supply device when the controller detects an operation for responding to an incoming call. The Examiner cites Hansson at column 4, lines 36-42, as disclosing this feature. However, the cited section does not disclose or suggest an incoming call, and therefore the reference does not identically disclose all of the features of claim 17.

Claim 18 relates to a radio terminal that includes, *inter alia*, a controller making a request to said software device at least N times for receiving a plurality of divided control-software blocks via a radio communication line for updating said stored software. The Examiner asserts that figure 2 of Hansson at element 210, discloses this feature when N=1 (Office Action; page 8, lines 17-20). However, there is no disclosure or suggestion in Hansson relating to *receiving a plurality of divided control-software blocks*. Therefore, for at least this reason, claim 18 is allowable.

Claim 19 relates to a radio terminal that includes, *inter alia*, a receiving unit receiving information from said software-supply device concerning a number of divided software blocks for updating said stored software, before starting a download of said number of divided software blocks. Hansson apparently discloses a header containing the length of the file to be downloaded. However, "the header" is not a number of divided software blocks, and therefore Hansson does not disclose or suggest information from said software-supply device concerning a number of divided software blocks. Therefore, for at least this reason, claim 19 is allowable.

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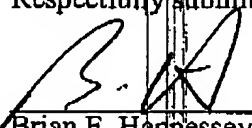
New claim 22 relates to a software supplying system that includes, *inter alia*, a communication unit adapted to transmit to the radio terminal device both a) a number representing a quantity of divided blocks of the software application, and b) the divided blocks of the software application. It is respectfully submitted that none of the cited references disclose or suggest this feature, and therefore for at least this reason, new claim 22 is allowable.

**CONCLUSION**

In view of the remarks set forth above, this application is believed to be in condition for allowance which action is respectfully requested. However, if for any reason the Examiner should consider this application not to be in condition for allowance, the Examiner is respectfully requested to telephone the undersigned attorney at the number listed below prior to issuing a further Action.

Any fee due with this paper may be charged to Deposit Account No. 50-1290.

Respectfully submitted,

  
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